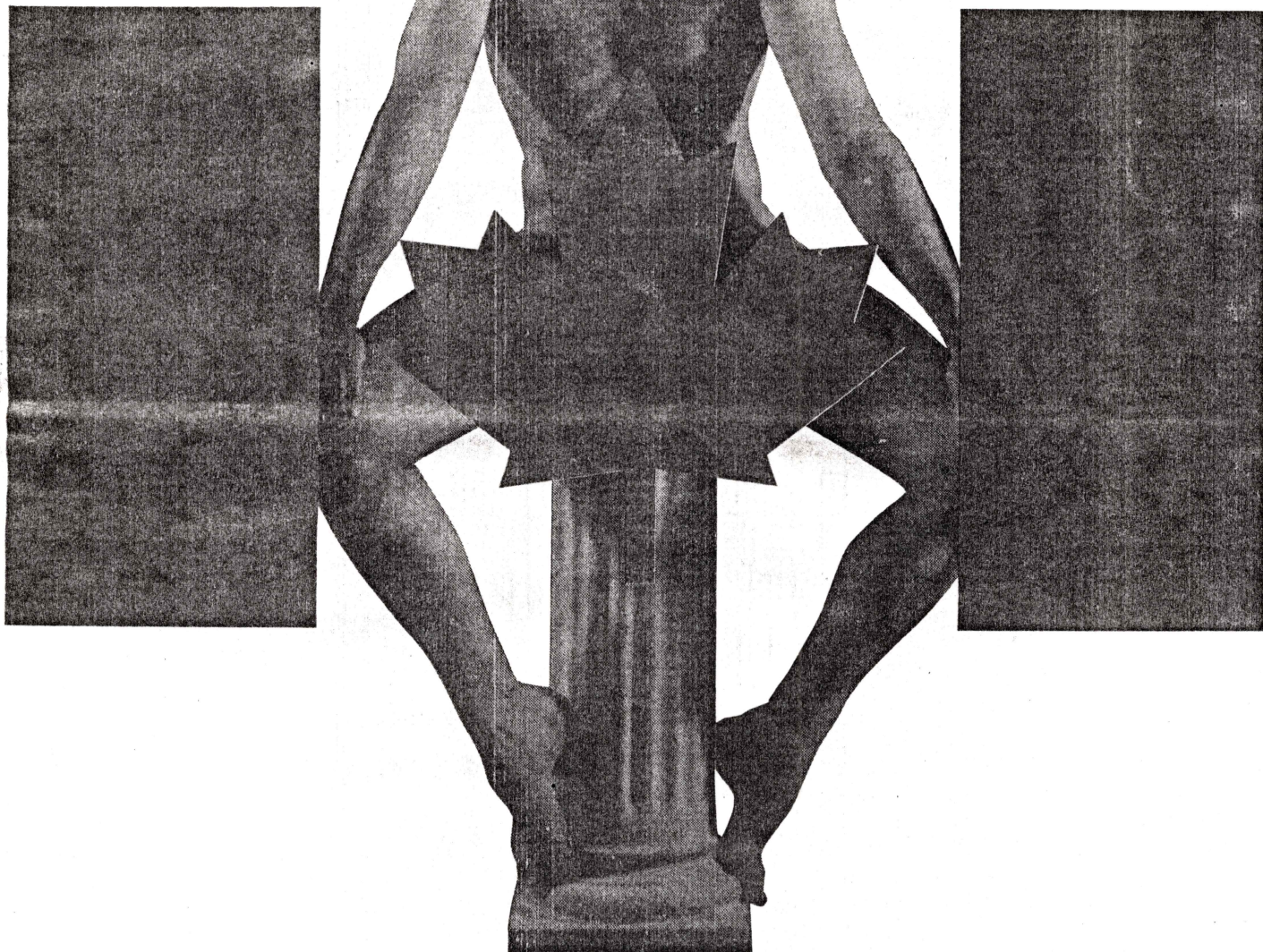


# SAN FRANCISCO Bay Times

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## QUEER CENSORSHIP.

Canada's Bigoted New Custom.

Story begins on page 4.

Photo Detail by Mark I. Chester



# Canada's New Porn Wars: "Little Sister" Gay/Lesbian Bookstore Battles Canadian Customs

by Tim Kingston

Canadian Customs authorities are in the middle of an undeclared war on Canadian gay/lesbian bookstores that import queer and homoerotic literature from the United States. In Canada you may have to wait six months for the latest issue of the *Advocate* to get through customs. You may never get a chance to read *Macho Sluts* by Pat Califia or David Leavitt's *A Place I Have Never Seen*—both have been detained or banned by Canadian Customs. And it's not just gay and lesbian literature that is seized: Marguerite Duras' latest novel was held back in September. Even the satirical works of Ambrose Bierce have been stopped at the border.

But Little Sisters Book and Art Emporium, a small gay/lesbian bookstore in Vancouver, is fighting back against the censorship. The store is suing the Canadian government, challenging the authority of Customs to seize allegedly obscene books at the border. The lawsuit, due in court next year, also charges Canadian Customs authorities with enforcing obscenity statutes in a homophobic and discriminatory manner.

"[Customs officials] are trying to silence an entire community's erotic imagery through sheer harassment at the border," says Jannine Fuller, manager of Little Sisters. Books having *anything* to do with the gay/lesbian/bisexual and transgendered communities are regularly seized by Customs—pornographic, erotic or not. What really seems to matter to Customs is what kind of bookstore the books go to. Shipments to gay/lesbian or women's bookstore get seized, while those destined for mainstream and corporate bookstores are rarely detained.

"You have customs officers with no legal training making these decisions," complained Toshiya Kuwabara of Censorstop, a Canadian anti-censorship group. "They are making decisions whether or not they will allow someone to read something. They are acting as judges, deciding if something is obscene and therefore admissible to Canada."

Little Sisters initially launched its counterattack three years ago in 1990. While the case has been consistently delayed by the Canadian Courts—the latest setback was on Sept. 28—Fuller remains confident of victory. "We are committed to bringing Canadian Customs to a place where it is accountable for its actions, in front of the specter of the Canadian public," she says. "This case will put Customs on trial."

Fuller believes the lawsuit, when it is tried, will highlight Canadian Customs' homophobic targeting of gay and lesbian material. She is optimistic about winning the case and, consequent-

ly, stopping the seizures of gay and lesbian materials. But she also hopes Canada's obscenity law will eventually be overturned. Currently Little Sisters is backed in its lawsuit by the British Columbia Civil Liberties Association (BCCLA) and other civil rights groups in Canada who argue the government is violating the bookstore's right to free expression and equality under Canada's Charter of Rights and Freedoms.

## FIRST RESPONSE

The original Little Sisters lawsuit contained three main elements. First, it argued that Canada's obscenity law, on its face, was a violation of the Charter's right to free speech. Second, the suit alleged the seizures were a form of prior restraint, effectively banning materials before the courts can make a decision on the obscenity of the material. Finally, the suit charged that the law was being enforced in a discriminatory and homophobic fashion.

In 1992 the free speech challenge to the obscenity law was dropped from the suit, because of the Canadian Supreme Court's "Butler" decision which ruled freedom of speech does not extend to pornography. That decision was music to the ears of anti-porn author and activist Andrea Dworkin, who asserted "the Butler decision is probably the best articulation of how pornography, and what kinds of pornography, hurt the civil status and civil rights of women."

The Butler decision replaced a morality-based community-standards definition of obscenity, and substituted a regulation of pornography on its potential harm to women—based on Dworkin and Catharine MacKinnon's theory that pornography causes violence to women. If pornography harms women, they argue, obscenity legislation restricting pornography will protect women. (MacKinnon helped draft a legal brief instrumental in enacting the Butler ruling. She was not available for comment.)

Despite Butler, Joseph Arvey, a respected Canadian constitutional attorney handling the case for Little Sisters, says the remaining two elements of the case constitute a significant threat to the constitutionality of the obscenity law. He says the actions of Canadian Customs "amount to unconstitutional prior restraint that is counter to freedom of expression under our Charter of Rights."

"They are targeting gay and lesbian materials," says Arvey. "It is a question of being able to prove that." He adds, if the case is won, "It will not just have an impact for Little Sisters, or British Columbia, it will mean the law is invalid across the



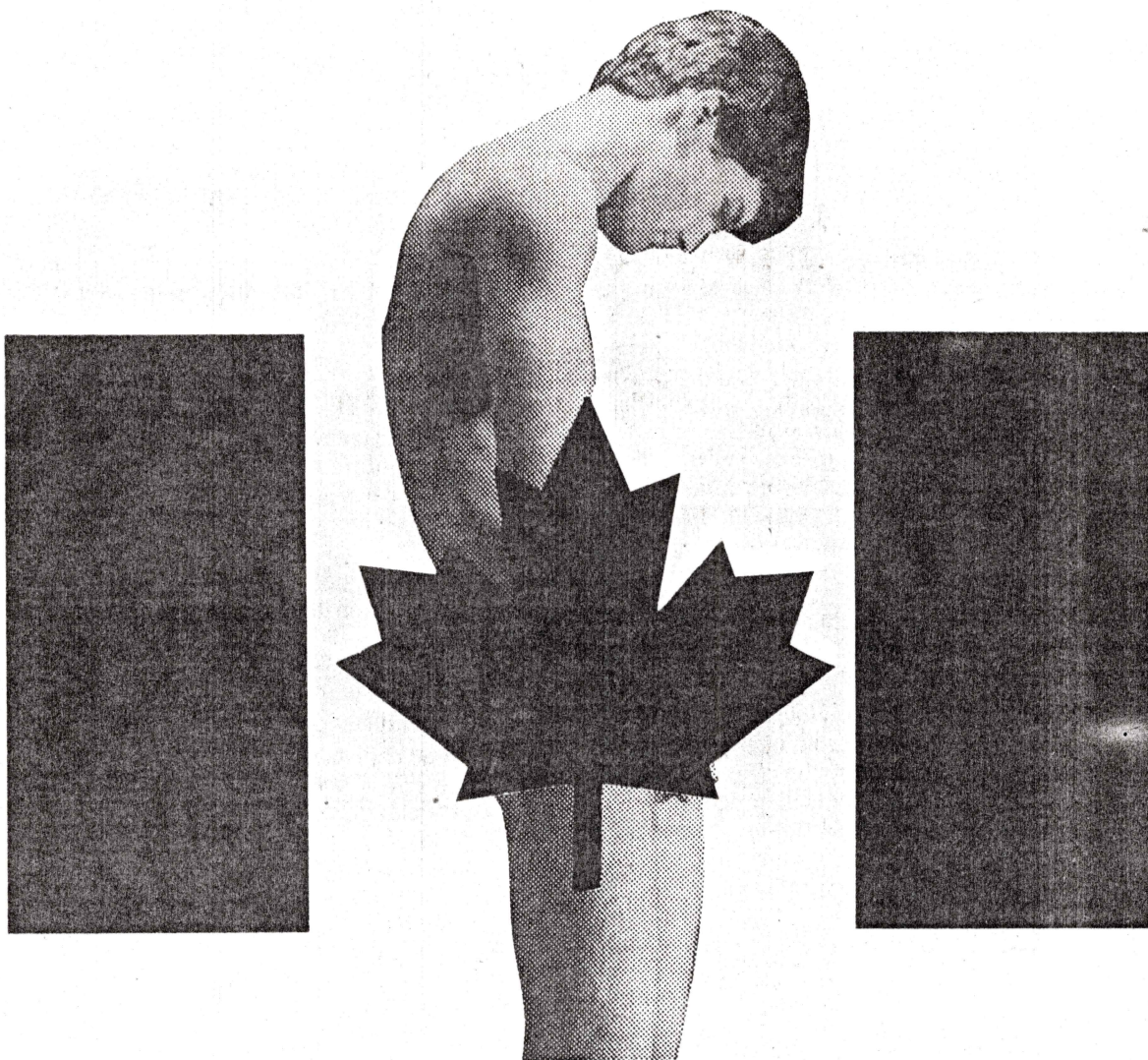


Photo Detail by Mark I. Chester

country.”

#### **CROWN SHENANIGANS AND LEGAL SETBACKS**

The Little Sisters lawsuit suffered a major setback on Sept. 28, 1993, when the case was adjourned for an indefinite period. Crown (Canadian government) attorneys successfully requested the delay. Now the case will probably not be tried until the spring or fall of 1994. But, during that time, Canadian Customs will be free to continue seizing gay and lesbian literature and materials.

Fuller charges. “It is nothing but harassment to have the case canceled. It is a way to make it impossible to continue these challenges.” The adjournment has cost Little Sisters \$30,000 in plane fares and other expenses that have had to be reimbursed to witnesses who had been scheduled to appear at the trial.

The case has been put off twice since 1990, due to the Crown’s legal maneuvers. Each time it was about to come to trial, Crown attorneys successfully made last-ditch efforts to delay. Crown attorneys tried to have the case dismissed even before it was first filed.

#### **“JUDGES AT THE BORDER”**

“[Canadian Customs] are openly and consistently homophobic,” says Lawrence Boyle, owner and manager of L’Androgyne, a Montreal gay/lesbian bookstore. “Their goal is to wipe out the presence of gay and lesbian books from Canada. It is easily done because the books are often from the U.S. and most are from small presses.” Boyle added sarcastically. “Canadian customs claims they don’t ban books by going through boxes [of deliveries], they do it by title.

So you can only ask, ‘Gee, What caused them to pull it out of the order?’”

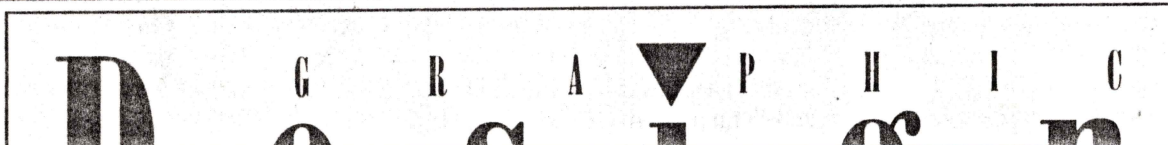
Don LaBelle, senior communications advisor for Canadian Customs, flatly denies the accusation. “We do not discriminate against lesbian and gay book stores, or the manner they come in.” Labelle asserts that Customs officials’ application of obscenity guidelines is fair and consistent across the board. Harry Wruck, lead counsel for the Crown, declined comment, due to the case currently being in litigation.

Books by John Preston, John Rechy, Susie Bright and Tee Corrine have all been detained or banned by Customs (see sidebar). Titles such as *Gay Ideas*, *The Lesbian and Gay Studies Reader*, *FAGRAG*, *A Taste of Latex*, *Hothead Paisan* and even *Return to Lesbos*—published in 1962—have been held up. Customs officers even seized a whimsical Christmas edition of *On Our Backs* in which a woman was all tied up in Christmas decorations. Canadian Customs called it bondage!

Yet *Hustler* does not get banned in Canada. Neither does *Playboy*, *Penthouse* or other straight erotic magazines. Even commercial porn videos are safe from seizure, because they are for commercial, not private use and are regulated by another arm of the government.

Inland Books—a New York-based small-press book distribution company, and the largest U.S. exporter of lesbian/gay literature to Canada—has had 73 percent of its total 1993 shipments to Canada detained. “Once they discovered we were a primary source for this material, we became a primary target,” says Dennis Mahoney, Inland’s customer service manager.

Customs regulations specifically prohibit any





written or visual depiction of "anal penetration" from entering Canada. Yet when Customs officer LaBelle was asked why depictions of anal penetration are banned, while the actual practice is not illegal, he declined comment.

The prohibition of anal penetration means a substantial percentage of gay male erotica is by definition prohibited. There is no such prohibition on vaginal penetration. The ban on depictions of anal penetration is, however, not consistent. Jannine Fuller says the *Joy of Gay Sex* was banned at first, but the heterosexual *Joy of Sex* was not. Yet, Fuller says there are more depictions of anal intercourse in the straight version of the book than in the gay. Is anal penetration only acceptable when differently gendered people do it?

Canadian customs also specifically restricts any materials referring to bondage and S/M. There is even a specific ban on depictions of spanking! But again, it is gay/lesbian S/M that gets harassed. While *Bad Attitude*, a lesbian S/M magazine gets banned, Madonna's *Sex* (the book) is sold throughout Canada.

John Preston says protection from harassment depends on clout. Preston edited two "provocative and unreserved" anthologies of erotica for Penguin Books. He wrote in the *Boston Phoenix*, "Do you think Canadian Customs has stopped importation of those books? Of course not. For one thing it would inconvenience a huge multinational corporation that would quickly respond." Little Sisters, Glad Day and other gay, women's and alternative bookstores get nailed.

Sex writer Pat Califia, who was scheduled to be a witness for Little Sisters before the case was adjourned, says Canadian Customs is engaged in deliberate policy to drive gay and lesbian bookstores out of business. "What they do is, they started seizing books in October or November. They release them in February. As any bookstore owner will tell you, that is when they make all their money for the year." The shelves of two of the larger gay/lesbian bookstores in Canada were virtually bare during the critical Christmas season. Coincidence?

#### THE BUTLER RULING: FIGLEAF OR FEMINIST? REVISITING THE PORN WARS

The 1992 Butler decision instigated a retooling of Canada's obscenity law. The decision was a serious setback to the Little Sisters lawsuit, because it upheld the obscenity law. Butler states, "If true equality between male and female is to be achieved, we cannot ignore the threat to equality resulting from exposure to audiences of certain types of violent and degrading materials."

Depending on where you stand in the pornography debate, the Butler ruling was either an essential modernization of legislation to take account of the harm that pornography does to women, or a sneaky way to broaden the repressive powers of the state apparatus under color of feminism.

"Censors are always delighted to get a liberal rationale for doing their dirty work," snapped Pat Califia. "The Butler decision says [to Canadian Customs] you are not prudes. You are white knights defending womanhood and preventing battery and rape." Califia and other critics charge Butler simply allows the state to suppress discussions and depictions of sexuality not popular with the authorities—like queer sexuality.

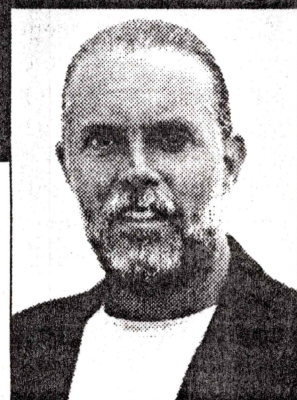
"They do this without fail," complained Danny Cockerline, a gay activist in Toronto. "They make some revisions of laws that are supposed to be used to protect women and children, then they use it to attack the gay community."

Andrea Dworkin and the Woman's Legal Education and Action Fund (LEAF)—the group that submitted MacKinnon's brief to the Canadian Supreme Court—deny gays and lesbians risk state repression as a result of Butler. Dworkin instead asserts the ruling protects both heterosexual women and lesbians from harm. Canada has written an obscenity law with "a gender equality provision" different from any other obscenity statute in the world, says Dworkin. "Most obscenity laws are based on a hatred of women's bodies and homophobia; the Canadian law is very different." She asserts, "[Butler] includes the concept of harm to women as part of the obscenity standard... It says, essentially, that the Canadian com-

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munity does not accept harm to women as a public standard."

Dworkin asserts pornography is a system and practice—somewhere between speech and action—that exploits women, children and sometimes men. "It is a parasitic system that uses women's bodies as a commodity to create profit for pimps, not publishers." Dworkin argues pornography plays a direct role in inciting and inspiring violence against women. She also contends that pornography lowers the civil status of women by its very existence, and use, by men. Because of images in pornography that degrade and dehumanize women, her theory asserts men who use pornography develop "bigotry against women, aggression against women [and a] dehumanization of women."

The Butler decision is legally important because it elevates discussion of pornography from the realm of a dispute over free speech, to a dispute between free speech and women's civil rights, says Kathleen Mahoney, a law professor at the University of Calgary who worked with LEAF on the Butler case. Mahoney's logic is, if pornography harms women it can be defined as hate speech. If pornography is hate speech, it can be prosecuted in Canada under equal rights statutes, which can override free speech rights—if that is deemed to be in society's interest.

Mahoney says under the Canadian Charter of Rights and Freedoms, unlike in the U.S., different rights can be pitted against one another. Thus, she says, "There are two constitutional rights here competing with one another and the government, more than being the bad guy...becomes a mediator between two competing rights, and two competing groups that want rights." In this analysis, Mahoney identifies those two competing groups and rights as the civil rights of women vs. the free speech rights of porn consumers—presumed to be men. And who loses under Butler? Porn consumers.

#### POWER AND PREJUDICE

"The problem with Butler is the problem with any government restriction on speech," says Ran-

dy Hecht, director of Feminists for Free Expression. "What happens is that once the government has control over what people may or may not say, the government interpretation becomes the one by which we must all live."

Hecht points out that the central reason the U.S. First Amendment exists is to protect *unpopular* speech, not the ideas everyone agrees with. Hecht warns that as soon as *any* restrictions are made to the First Amendment, the whole concept falls apart. "Dismantling the First Amendment is far more dangerous to women than anything else I can think of," she says. "Any progress that women have made in history has been made because they were permitted to speak out at a time when those ideas were not popular."

Aside from the free speech problems, critics assert Dworkin's theory is simply wrong. "[Dworkin] is not accurate when she says that causality can be corroborated," says Barbara Dority, director of the Washington Coalition Against Censorship. Dority charges that Dworkin's proof that pornography hurts women is based on anecdotal evidence and manipulated social science studies.

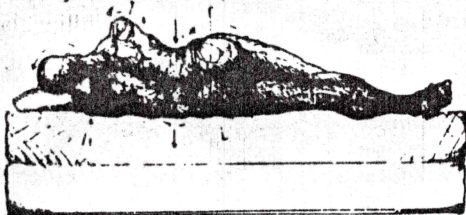
Dority says even the Meese Commission, which was packed with right-wingers and anti-porn activists, could not ultimately establish a link between pornography and harm to women. Dority says, "What the Meese Commission said was that although they could not prove it, [they] still believed it was there." Quoting the Commission directly from page 951, Dority read, "While [the] results offer some coorelational evidence, again, they do not support any causal link between readership of such men's magazines and sexually aggressive behavior."

If there really is such a link between pornography and violence against women, asks Dority, why are the rates of violent crime against women not stupendously high in Sweden, the Netherlands and other Scandinavian countries where all forms of pornography are readily available? Dority asserts blaming pornography for violence against women is a simplistic "quick

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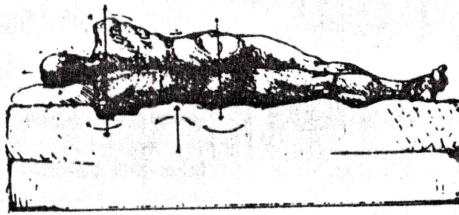
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fix" solution: "We have worked for years for equal rights for women; it is a long arduous process. [Dworkin and co.] have seized upon this notion that if we can eliminate material by which they are personally offended...then violence against women will cease...It is ridiculous!"

"Words do not harm women," stresses Randy Hecht. "Actions create harm to women. There are men who respond to certain stimuli on the basis of peculiarities within their personalities. That is not a reflection on the material they were viewing or reading." Hecht points out that Charles Manson got his inspiration from the Sharon Tate murders from the Bible: "I don't hear MacKinnon, Dworkin or anyone else arguing the Bible should be banned. It would be foolish to take such a position. Neither the Bible, nor *Playboy*, nor *Huck Finn* causes people to be racist or violent or murderers."

#### QUEERS: BUTLER'S PRIME TARGET?

What do Andrea Dworkin and the Butler decision have to do with the Little Sisters case? An awful lot. The very first successful obscenity case prosecuted by the Crown authorities after the Butler ruling was not against some violent and degrading heterosexual pornography. The first prosecution was against Glad Day, a gay/lesbian bookstore in Toronto, for selling *Bad Attitude*, an S/M magazine for dykes!

Adding insult to injury—while also making the homophobia of the authorities more apparent—a mainstream bookstore nearby stocking *Bad Attitude* was not touched by the authorities.

Even though *Bad Attitude* is a magazine run by and for S/M lesbians, the judge found it obscene and capable of causing harm to women. Through a unique twist of analogy and logic, the judge ruled if one of the women in a *Bad Attitude* domination fantasy was replaced by a man, then the story would obviously be harmful and degrading to women. "The fact that the aggressor is a female is irrelevant," wrote the judge.

Due to the *Bad Attitude* case and other seizures and crackdowns by the authorities, gay/lesbian ac-

tivists, free speech advocates and civil libertarians contend the Butler decision is being used to attack the gay, lesbian and S/M communities. Mary Teresa Devlin, a staff attorney with LEAF, is sympathetic to that worry, but argues the law is not the problem. "We understand that sentiment and we disagree. That is not to say there is no backlash [against gays and lesbians], but we feel Butler has been misinterpreted by the courts and customs."

#### DWORKIN VS. LESBIAN, GAY AND S/M COMMUNITIES

Dworkin sees the *Bad Attitude* case quite differently from both Devlin and the gay activists. While Dworkin asserts she opposes homophobic interpretations of the Canadian obscenity law, and says she opposes morality-based obscenity laws in general, she is not exactly a fan of sexually explicit queer literature.

"Lesbian porn is an expression of self hatred," asserts Dworkin. "When it is trafficked in the world, it becomes a social reality, and the hatred that it spreads then is not longer a hatred only of self, but becomes a hatred of the group." Dworkin even hinted—without offering any evidence—that a link may exist between lesbian pornography and lesbian domestic battery.

Dworkin has little sympathy or understanding for the lesbian S/M world of *Bad Attitude*. She said she did not know what the term "safe, sane and consensual" meant when used by *Bad Attitude* editor Jasmine Sterling. Dworkin also asserted that S/M is not something "associated in particular" with lesbians, because it is "based on a deep and sexualized hatred of women." Gay male S/M is dismissed as an ultimately conformist mimicking of the status quo.

Other gay male pornography is not much better in Dworkin's view: "What you see in gay male pornography is consistent sexualization of hierarchies of power." Dworkin views sexually explicit material for gay men as being as bad as lesbian pornography, because she says pornography of any sort—whether or not women are present—eroticizes hierarchy and dominance and submission. Again she asserts such fantasies only serve to support the status quo, which ultimately harms women.

For Dworkin, the transgendered are victims of pornography, pure and simple. Bisexuals receive nary a mention in her universe (perhaps they should be grateful?).

When it comes right down to it, ALL pornography is wrong in Dworkin's book. Thus, if stopping pornography means suppressing free expression of gay and lesbian sexuality—that is a worthwhile price to be paid in the battle to protect women from pornography's exploitation and violence. "The gay and lesbian community has to understand that pornography hurts women as a class," says Dworkin. She charges anyone who opposes her efforts to ban pornography with protecting those who create inequality for women. "The gay and lesbian community is as reactionary and rearguard and as women-hating as any other community when it insists on trafficking in those materials."

Dworkin does acknowledge not all gays and lesbians agree with her. But, she says, lesbians who make common cause with gay men in opposing her analyses of pornography are few in number. Dworkin also accuses such lesbians of having "their own agenda that is not necessarily the same as the agenda of lesbians who care about lesbians and lesbian rights." Dworkin does not leave much room for respectful disagreements.

"The gay and lesbian community has got to wake up and smell the coffee here" says Dworkin. "If they traffic in those [pornographic] materials, they are responsible for the harm those materials cause. In my view they need to be held legally accountable."

Dworkin's numerous critics say it is but a hop, skip and a jump from her statements to the approval of raids, nationwide book-bannings and book-burnings of material deemed pornographic. Pat Califia charges Dworkin is "advocating that the agents of the state go after women she disagrees with."

#### WITH FRIENDS LIKE DWORKIN...

Where Dworkin sees Canada as the brave new

## BANNED, SEIZED OR DETAINED NORTH OF THE BORDER: A PARTIAL LIST.

#### COMICS AND MAGAZINES:

The Advocate, A Taste of Latex, Bad Attitude, Changing Men, Hothead Paisan, Gay Comics, The Killer Condom, On Our Backs, RFD, Squeak the Mouse, Wimmen's Comix.

#### ART:

Tom of Finland Retrospectives.

#### BOOKS:

The Joy of Gay Sex, The Story of O, Sex Behind Bars, The Masters, Counterpoints, A Sense of Loss, Blue of Noon, Sexual Children—A Treatment Manual, Gay Ideas, All True Lovers, Caught Looking—Feminism, Porn and Censorship, Against Sadoomasochism, Lies of Our Times, Leather Folk, Emmanuelle 1,2,3, Hot, Hotter, Hottest—a chili pepper cookbook.

#### AUTHORS:

Henry Abelove: The Lesbian and Gay Studies Reader; Kathy Acker: Blood and Guts in High School; Laura Antoniou: Leather Women; Karen Barber: Bushfire, Afterglow; Stephen Beachy: The Whistling Song; Ambrose Bierce: The Devil's Dictionary, The Devil's Advocate, An Ambrose Bierce Reader; Christopher Bram: Surprising Myself; Susie Bright: Erotica 2, Sexual Reality; Pat Califia: Macho Sluts (detained four separate times), Melting Point, The Lesbian S/M Safety Manual, Doe and Fluff; Tee Corrine: Lovers; Marguerite Duras: The Man Sitting in a Corridor; Andrea Dworkin: Pornography—Men Possessing Women, Women Hating; Mickey Fleming: About Courage; Bell Hooks: Black Looks—Race and Representations; David Leavitt: A Place I Have Never Seen; John Preston: Entertainment For A Master; John Rechy: City of Night; Marquis De Sade: 120 Days of Sodom; Samois: Coming to Power; Valerie Taylor: Return to Lesbos; David Wojnarowicz: Memories that Smell Like Gasoline ☼

world of feminist legislation and theory. Califia sees a 1984 nightmare scenario of sexual repression specifically targeting the queer community. "Andrea Dworkin has done more damage to women's culture in her tenure as darling of the media than anyone who is a leader of the right wing," seethed Califia. "She is morally responsible for what is happening to women's literature in Canada."

Califia says gays, lesbians, bisexuals and the S/M community in the United States should be concerned about the Little Sisters because the rationale for the Canadian obscenity law comes from the American anti-porn movement. She says, "There is an excellent possibility that in two years or ten years American law will look more like Canadian law today." If Little Sisters loses their case, Califia fears anti-pornography legislation in this country could wind up targeting *On Our Backs* and *Drummer* magazine.

The second reason to be worried, especially for gay men and lesbians, says Califia, "is there is a common cause between us all over the world. When aspects of our culture cannot circulate around national boundaries, we end up fragmented and isolated." On an artistic level too, there is a price to be paid by American producers of literature for Canadian censorship. If books are seized in Canada it makes it harder for artists to make a living, and Califia says it makes her feel like a criminal: "It is always in the back of my mind that this [work] will be banned."

More than anything else, an exasperated Califia says, "I just want their goddam sensible shoes off the back of my neck!"

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